

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 1325 of 2015 ()

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AGAINST THE AWARD IN OPMV 222/2013 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
VATAKARA DATED 19.2.2015**

APPELLANT(S)/PETITIONER :

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- 1. ABDULLA AGED 47 YEARS
S/O. AMINA, KOOMULLA KANDY, RESIDING AT PUTHIYOTTIL
MANIYUR AMSOM, MANDARATHUR DESOM, VATAKARA TALUK.**
 - 2. MARIYAM AGED 62 YEARS
D/O. AMINA, KOOMULLA KANDY, RESIDING AT PUTHIYOTTIL
MANIYUR AMSOM, MANDARATHUR DESOM, VATAKARA TALUK.**

BY ADV. SRI.MOHANAN V.T.K.

RESPONDENT(S)/RESPONDENTS :

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- 1. BABU
S/O. BALAN, RESIDING AT KOODATAVIDA, CHORODE P.O.
VATAKARA, PIN-673 106.**
 - 2. ROHIL A., AGED 27 YEARS
S/O. CHATHU, RESIDING AT ATTUPURATH HOUSE
IRINGANNUR P.O., PIN-673 514, IRINGANNUR TOWN
SAMSKARIKA NILAYAM, VATAKARA TALUK.**
 - 3. UNITED INDIA INSURANCE COMPANY LIMITED
CITY TOWER, NEAR OLD BUS STAND, VATAKARA
PIN-673 101.**

**R3 BY ADV. SMT.SARAH SALVY
R3 BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
vpv**

P.N.RAVINDRAN & P.V.ASHA, JJ.

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M.A.C.A.No.1325 of 2015

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Dated this the 19th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(M.V.)No.222 of 2013 on the file of the Motor Accidents Claims Tribunal, Vatakara. They are the son and daughter respectively of late Amina who was knocked down by the stage carriage bus bearing registration No.KL-11/N-325 owned by the first respondent, driven by the second respondent and insured by the third respondent. In that accident, late Amina sustained serious injuries and in the course of treatment in Medical College Hospital, Kozhikode, she succumbed to the injuries sustained by her on the same day. The appellants thereupon instituted O.P.(M.V.) No.222 of 2013 seeking the sum of Rs.10,00,000/- as compensation. They contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by its driver, the second respondent. Respondents 1 and 2, the owner and driver respectively, did not enter appearance though they were served, with the result, they were set exparte. The third respondent insurer entered appearance and filed a written statement denying and

disputing the averments in the claim petition. They contended that there was no rashness or negligence on the part of the second respondent. They attributed negligence to the deceased. They also disputed the age, occupation and monthly income of the deceased and contended that the compensation claimed is excessive.

2. Before the Motor Accidents Claims Tribunal no oral evidence was adduced by both sides. However on the side of the claimants Exts.A1 to A6 were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and held that in the absence of any evidence to prove the occupation and income of the deceased and having regard to her age, compensation can be awarded only under the head loss to the estate, loss of love and affection and pain and suffering as also towards funeral expenses and expenses for transport to hospital. The Motor Accidents Claims Tribunal accordingly awarded a total sum of Rs.1,66,000/- as compensation consisting of Rs.1,000/- towards transport to hospital, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards pain and suffering, Rs.50,000/- towards loss of love and affection, and Rs.80,000/- as compensation for loss to the estate. The said amount was arrived by taking the monthly income of the deceased as Rs.4,000/-. The Motor Accidents Claims Tribunal also directed the third respondent insurer, who had not

pleaded or proved breach of policy conditions, to deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit as also proportionate costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri.V.T.K.Mohanan, learned counsel appearing for the appellants and Smt.Sarah Salvy, learned counsel appearing for the third respondent. Sri.V.T.K.Mohanan, learned counsel appearing for the appellants contended that the Motor Accidents Claims Tribunal has while computing the compensation payable under the head loss to the estate, deducted 2/3rd of the income of the deceased towards personal expenses. The learned counsel contended that as per the accepted principles only 1/3rd of the monthly income could have been deducted towards personal expenses of the deceased and therefore, the award to that extent is liable to be modified. The learned counsel for the appellants also submitted that the deceased had sustained a blunt injury to the chest thereby indicating that she would have undergone severe pain and suffering, that she did not die instantaneously and therefore, the Motor Accidents Claims Tribunal should have awarded the entire amount claimed as compensation under the head pain and suffering instead of limiting it to Rs.10,000/-. The learned counsel also

submitted that the compensation awarded under the head loss of love and affection is also meagre and inadequate.

4. Per contra, Smt.Sarah Salvy, learned counsel appearing for the third respondent insurer submitted that as the deceased was aged 75 years and the claimants were not dependent on the deceased, compensation cannot be awarded for loss of dependency but only under the head loss to the estate. The learned counsel invited our attention to the decision of a Division Bench of this court in **Joseph v. Giji Varghese** [2009 (4) KLT 199] which has been relied on by the Tribunal and submitted that where the claimants are grown up children of the deceased, who in the case on hand was aged 75 years, only 1/3rd of the earnings can be computed as loss to the estate. As regards the compensation awarded under the other heads, the learned counsel submitted that just and fair compensation has been awarded and no enhancement is called for.

5. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials presently on record. The fact that the deceased was aged 75 years at the time of the accident is not in dispute. The claimants are the grown up children of the deceased. The first claimant who is the son of the deceased was aged 45 years and

the second claimant who is her daughter was aged 60 years, as on the date of the accident. They have no case in the claim petition that they were solely depending for their livelihood on the income derived by the deceased. That apart, there is no acceptable evidence on record to prove the occupation or the income of the deceased. Apart from the ipse dixit of the claimants that the deceased was earning a monthly income of Rs.25,000/-, there is no material to substantiate the said claim. In such circumstances, no exception can be taken to the notional income adopted by the Tribunal for arriving at the compensation awarded under the head loss to the estate. As stated earlier, the claimants are not dependents of the deceased. A Division Bench of this court has held that in such circumstances compensation cannot be granted under the head loss of dependency but only under the head loss to the estate. The Division Bench also held that only 1/3rd of the earnings can be computed as loss to the estate of the deceased. The Motor Accidents Claims Tribunal has in the instant case, applied the principles laid down by the Division Bench and awarded compensation on that basis. We therefore find no grounds to hold that the compensation awarded under the head loss to the estate is in any way meagre or inadequate. As regards the compensation awarded under the other heads also, we are of the opinion that no

enhancement is called for.

We accordingly hold that there is no merit in the instant appeal.
The appeal fails and it is dismissed. No costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
P.V.ASHA
JUDGE

vpv